

3 hours ago MISC. BENCH No. - 2709 of 2013 Order Date :- 15.4.2013

Chief Justice's Court

Case :-

MISC. BENCH No. - 2709 of 2013

Petitioner :-

Suo-Motu In The Matter Of U.P. State Information

Commission

Respondent :-

State Of U.P. Thru. Secretary (Appointment)

[P.I.L.]

Petitioner Counsel :-

Suo Motu

Respondent Counsel :-

C.S.C.

Hon'ble Shiva Kirti Singh, Chief Justice

Hon'ble Devendra Kumar Arora, J.

Heard learned counsel for the State in this public interest litigation.

This public interest litigation is a result of suo-motu cognizance taken by this Court of certain facts reported in a Newspaper dated 22nd March, 2013 disclosing as many as eight vacancies out of ten posts of Information Commissioner in the State of Uttar Pradesh.

A counter affidavit has been brought on record on behalf of the State of U.P. to explain as to why such a situation has arisen.

According to the counter affidavit certain provisions of the Right to Information Act, 2005, a Central Act (hereinafter referred to as 'Act') were under challenge before the Apex Court in the case of Namit Sharma vs. Union of India

and the Apex Court by its

judgement dated 13th September, 2012, reported in (2013) 1 SCC 745, issued a number of directions in order to make the Act constitutionally valid as well as workable. According to stand of the State of U.P., the directions include directions to the concerned legislature to reword or amend the provisions of sub-sections 12 (5), 12 (6), 15 (5) and 15 (6) of the Act. The counter affidavit further discloses that soon after the judgment, the Union of India preferred a review application and the same is still pending before the Apex Court.

The writ petition of

Namit Sharma

noted above was partly

allowed with orders and directions in various sub-paragraphs of paragraph 108 of the judgement. Dealing with the main challenge to the provisions of Section 15 (5) which relates to the State Information Commissioner with which we are concerned, the Apex Court held the same to be constitutionally valid, but with a rider that to give it a meaningful and purposive interpretation, it is necessary for the court to read into these provisions some aspects, otherwise they would run foul of the constitutional requirements. The Court held and declared that the expression "knowledge and experience" appearing in the provisions would mean and include a basic degree in the respective field and the experience gained thereafter. Thereafter the Court went on to state that appointments of legally qualified, judicially trained and experienced persons would lead to more effective serving of the ends of justice as well as ensuring better administration of justice by the Commission. With respect to vires of sub-section 15 (6) of the Act, the Court held that it would prefer to read this provision as having effect "post appointment". In other words, cessation/termination of holding of office of profit, pursuing any profession or carrying any business is a condition precedent to the appointment of a person as Chief Information Commissioner or Information Commissioner at the Centre or State levels. Thereafter, the Court observed the necessity for the legislature to reword or amend the concerned provisions of the Act at the earliest to avoid any ambiguity or impracticability and to make it in consonance with the constitutional mandates. There is also a direction to frame required rules with reference to Sections 27 and 28 of the Act within a period of six months. The Apex Court further held that henceforth, at the respective level, i.e. Central or State, Information Commission shall work in Benches of two members each. One of them being a "judicial member" and the other "expert member". The judicial member should possess a degree in law, having a judicially trained mind and experience in performing judicial functions. It was clarified that a law officer or a lawyer may also be eligible provided he is a person who has practised law at least for a period of twenty years as on the date of the advertisement. Such lawyer should also have experience in social work. The

Court also emphasized that the competent authority should prefer a person who is or has been a Judge of the High Court for appointment as Information Commissioners. The Chief Information Commissioner at the Centre or the State level shall only be a person who is or has been a Chief Justice of a High Court or a Judge of the Supreme Court of India. The other relevant direction was that the appointment of the judicial members to any of these posts shall be made "in consultation" with the Chief Justice of India and Chief Justices of the respective States, as the case may be.

On going through the directions of the Supreme Court noticed above, we are of the considered view that these directions which the Apex Court held to be only prospective, must be worked out by the concerned authorities even without waiting for the legislature to reword or amend the relevant provisions as indicated in paragraph 108.4 of such judgement. The words read into the relevant provisions by the Apex Court for saving the constitutionality of those provisions, have to be kept in mind by all concerned as if those words have been introduced by a competent legislature. No doubt, legislature has been given freedom to reword or amend the provisions to avoid any ambiguity or impracticability but such direction cannot be construed as a hindrance in the working of the Act till the legislative amendments are carried out.

The review petition filed by the Union of India in 2012 is pending without any stay or interim order. Hence, it would not be inappropriate for this Court to direct the concerned respondents and the State of U.P. to proceed with the task of filling of the vacant posts of Information Commissioner in the State of U.P. by following the provisions of the Act as well as by reading into it the words which the Hon'ble Supreme Court has directed to be read as per the judgement in the case of

Namit Sharma

(supra). This

exercise should be completed and vacant posts should be filled up at an early date, preferably within three months from today.

It goes without saying that this order and direction shall be subject to any order or direction which may be passed by the Supreme Court in the pending review application filed in connection with

the judgement in the case of
Namit Sharma.

Compliance report
should be filed in this case after three months.

List the matter after three months.

In the meantime, it shall be open for the State or any of the parties
to seek further clarification in case the Apex Court passes any
order in the review application.

Order Date :-

15.4.2013

RK

Posted 3 hours ago by [upcpri](#)

0

Add a comment

Enter your comment...

Comment as: Google Account 

Publish

Preview